In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.3737 of 2006.

Date of decision:15.1.2007.

Sham Sunder and others.

...Petitioners.

Versus

Arvinder Singh and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.M.L.Saggar Advocate for the petitioners.

Mr.H.S.Sethi Advocate for the respondents.

...

Judgment.

S. N. Aggarwal, J.

The petitioners are the defendants in the learned trial Court. They had made reference in the written statement to the judgment dated 31.7.1964 decided by Shri Surinder Singh, the then Additional District Judge, Ludhiana. However, while producing the evidence, some other judgment dated 30.11.1964 passed by the same Court was tendered in evidence. When this mistake came to the notice of the petitioners, they had filed an application under Section 151 CPC for additional evidence to enable them to produce a copy of judgment dated 31.7.1964.

The said application was contested by respondent Nos.1 to 4

who were plaintiffs in the learned trial Court on the plea that the petitioners have already closed their evidence and the matter was coming up for arguments and,therefore, the application for additional was filed at a highly belated stage.

This application filed by the petitioners was dismissed by the learned trial Court vide order dated 7.6.2006.

Hence, the present Revision Petition.

The learned counsel for the petitioners submitted that he is not to produce any other evidence. He wants to tender a copy of the judgment dated 31.7.1964 which was referred to in the written statement.

On the other hand, the learned counsel for the respondents submits that the application has been filed at the time when the file was fixed for arguments in the learned trial Court. Moreover, the petitioners cannot be permitted to fill in the lacuna as it would cause prejudice to the case of the respondents. It was further submitted that no ground for producing additional evidence is made out. Hence, the dismissal of the petition was prayed.

The rival submissions have been considered. The petitioners who are the defendants in the learned trial Court had specifically made reference in the written statement to the judgment dated 31.7.1964 as one of the basis of their defence. Therefore, it appears that due to inadvertence, instead of tendering a copy of judgment dated 31.7.1964, copy of another judgment dated 30.11.1964 was tendered. Therefore, in the interest of justice, the petitioners are entitled to an opportunity to tender in evidence copy of judgment dated

31.7.1964 which is in tune with the case set up by them in the written statement. Substantial justice is supreme and procedural technicalities cannot be allowed to stand in the way.

Therefore, this petition is allowed and the petitioners are allowed to produce in evidence a copy of judgment dated 31.7.1964. However, the petitioners are burdened with costs of Rs.5,000/-.

The case is fixed in the learned trial Court for 10.4.2007. This date is, however, very far. Therefore, the parties are directed to appear in the learned trial Court on 6.2.2007. On that date, the petitioners would tender Rs.5,000/- in the learned trial Court for onward payment to the plaintiff-respondents and would produce a copy of judgment dated 31.7.1964. On that date, the learned trial Court shall grant one opportunity to the petitioners for appearance of the witness whose statement was recorded earlier when the judgment dated 30.11.1964 was so tendered. If the plaintiffs-respondents want to cross-examine him on the judgment dated 31.7.1964, they would be entitled to do so. If the petitioners fail to make payment of costs in the trial Court or fail to produce a copy of the judgment or the witness as stipulated above because of their own fault, then they would not be entitled to any other opportunity for this purpose.

January 15,2007. **(S. N. Aggarwal)**
Jaggi **Judge**